

North Dakota Board of Nursing Meeting Minutes – August 22, 2008

Call to Order:	Special Meeting called August 22, 2008 at 10:00 a.m. – ND Board of Nursing Conference Room, 919 S 7 th St, Suite 504, Bismarck, ND.		
Roll Call:	Eight board members present as follows: Nelson (Buzz) Benson, RN, President Charlene Christianson, RN, Treasurer JoAnn Sund, RN Mary Tello-Pool, LPN Via Telephone: Julie Traynor, RN, Vice- President Elizabeth Anderson, LPN Roxane Case, Public Member Dan Rustvang, RN Absent: Melissa Frank, LPN Staff Present: Constance Kalanek, RN, Executive Director Patricia Hill, RN, Asst. Director for Practice & Discipline Karla Bitz, RN, Associate Director Julie Schwan, Admin Services Coordinator Representative Guests: Calvin N. Rolfson, Attorney for Dr. Kalanek; SAAG Brian Bergeson; AAG Bill Peterson.		
AGENDA ITEM	ACTION		
Roll Call of Board Members	President Benson called the meeting to order and requested roll call. Eight members were present and one member absent.		
Approval of the Agenda	<i>Discussion:</i> Benson indicated the special meeting was called to discuss the letter from ND Long Term Care Association and ND Healthcare Association requesting an investigation of Dr. Constance Kalanek, Executive Director.		
	<i>Motion:</i> Sund, seconded by Case to: APPROVE THE AGENDA AS DISTRIBUTED.		
	<i>Roll call vote:</i> Anderson, yes; Benson, yes; Case, yes; Christianson, yes; Frank,absent; Rustvang, yes; Sund, yes; Tello-Pool, yes; Traynor, yes; 8 yes, 0 no, 1 absent. Motion carried.		
Discussion of Letter Received from NDLTCA and NDHCA	<i>Discussion:</i> In July, a letter was received from Shelly Peterson, President of the Long Term Care Association, and Arnold "Chip" Thomas, Executive Director of the ND HealthCare Association requesting that the board investigate whether Dr. Constance Kalanek, Executive Director violated the Nurse Practice Act Sections 43-12.1-14 subsections (4) (5). The letter addressed concerns regarding the board's implementation of Criminal History Record Checks and the planned use of ID Metryx as a vendor for the fingerprinting process. Conflict of interest issues were alleged as Kalanek's son is a partner in ID Metryx. At the July Board meeting, the following motion was made: DIRECT BRIAN BERGESON, SAAG, TO CONTACT THE ATTORNEY GENERAL'S OFFICE TO DETERMINE THE APPROPRIATE PROCESS FOR PROCEEDING WITH AN INVESTIGATION OF EXECUTIVE DIRECTOR CONSTANCE KALANEK TO DETERMINE IF THERE HAS BEEN A VIOLATION OF THE NURSE PRACTICE'S ACT. Bergeson has discussed this matter with the Attorney General's Office, and Bill Peterson, Assistant Attorney General was assigned to represent the board in this matter. Mr. Peterson was present for this meeting and participated in the discussion. Attorney Calvin N. Rolfson was present and represented Dr. Kalanek. Benson indicated he had called this special meeting to discuss how the board wishes to proceed in the matter of the Potential Violation Report received for Constance Kalanek, Executive Director. Tello-Pool wondered why this was being discussed again when there was direction at the last meeting to have the attorney general office investigate. She reported she assumed an investigation would take place based on the motion from the July meeting. Other Board Members also indicated that they thought an investigation would take place while other Board Members felt the motion, repeated above, was simply to seek direction from the Attorney General regarding the process. Peterson pointed out that the normal process for investigation of a nurse goes through the Disciplinary Review Panel (DRP). Since Kalanek is part of DRP, as well as some of her staff, DRP cannot be used for this process. Mr. Peterson reviewed the investigation process developed and adopted by the board and followed by the Disciplinary Review Panel when investigating a Potential Violation Report (PVR). The Disciplinary Review Panel first determines whether the PVR warrants an investigation or if the case should be dismissed. Mr. Peterson indicated that decision or process had not yet been considered by the board. Peterson recommended the board should proceed as closely as possible to the process used by the Disciplinary Review Panel, and the board should proceed as DRP would with any PVR. The board has adopted criteria for case closure that the disciplinary review panel uses in its decisions. Mr. Peterson reviewed the following criteria, anyone of which may be sufficient for dismissal of the allegations in this case: <ul style="list-style-type: none">• Alleged conduct did not affect nursing practice• Alleged conduct is an employer/employee issue• Alleged conduct is not a violation of the nurse practices act Mr. Peterson indicated the board may choose to do some investigation, and would then need to decide how to conduct an investigation. A written response to PVR from licensees is the first step. If response is not sufficient, the board may decide to conduct a more comprehensive investigation. The board could not conduct the investigation, but must appoint an investigator or panel of investigators. Peterson understands that it may be possible to use an investigator from the SD Board of Nursing. The purpose of the investigation is to collect information to decide if there are grounds for disciplinary action. Mr. Peterson indicated that there are three options open to the board are to 1) Investigate; 2) Refer the issue to the Employer (the board) 3) Dismiss - No Violation of the Nurse Practice Act. Peterson clarified that the board does not need to decide whether or not a violation of Nurse Practice Act occurred. At this point Mr. Peterson advised the Board that it should first decide whether the allegations against Kalanek warrant an investigation or the case should be dismissed.		

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<p>Discussion of Letter Received from NDLTCA and NDHCA (continued)</p>	<p>Benson asked the board for discussion regarding the options.</p> <p>Many of the Board Members indicated they did not feel it was Kalanek's intent to deceive the board about her son's involvement in ID Metryx. Benson and Sund indicated they knew of the relationship, Tello-Pool indicated she and other members were not aware of it. Benson indicated that he does not feel there was any intent to harm or deceive the public or the board. The process could have been done differently or better. He does not feel there is any violation of the Nurse Practices Act. Traynor indicated she does not feel that the issue is a violation of the Practices Act, but rather an employee/employer issue. Sund believes that we have had input from both the Board's legal counsel and the Attorney General's office, and does feel that their expertise is important to consider and rely on. She indicated that during her term as President during this implementation of the Criminal History Record Checks; she had discussions with Kalanek and never felt there was an attempt to hide anything. Pool indicated that she feels the heart of the matter is that Kalanek did not disclose to the full board the fact that her son is part owner of ID Metryx, a vendor that the board had planned to use for the criminal history record checks. She expressed concern that all members did not know, but that the message was still being relayed that the full board knew of the relationship. She could not find evidence that the board had approved ID Metryx as a vendor for CHRC. Sund indicated that as President of the board at the time, she also should be under investigation for the same issues as she did not bring the issue to the full board as President. Tello-Pool indicated that the board relies on information that staff gives us and this has become a trust issue for her. She indicated that people are angry with the board because they think there is a cover up. The board discussed the process from an employer/employee perspective and how issues are typically handled and reported to the board in other employment settings. The first step is typically a meeting with supervisors or employers, which in this case is the Board. The employer then decides whether or not to report the issue to the Board as a Potential Violation Report.</p> <p>It was questioned whether all the facts were on the table in this issue and what additional information could be obtained from an investigation in this case. Peterson indicated an investigation would provide an opportunity for Kalanek to present her side of the issue, which he doesn't believe the board has given her the opportunity to do. Mr. Peterson reminded the board that they were dealing with disciplinary action against Kalanek's nursing license. Peterson also indicated that, the board could determine to address this issue as an employment issue rather than a nursing license violation issue. Board members discussed that things should have been done differently, but feel this could be resolved as an employer/employee issue and not a disciplinary matter. Clarification was requested of which sections of the practice act were alleged to be violated in this case. Peterson clarified the sections that the letter alleges were violated are "has engaged in a pattern of practice or other behavior that demonstrates professional misconduct" or "has submitted to the board any information that is fraudulent, deceitful, or false". Peterson again reviewed the options available to the board.</p> <p><i>Motion Christianson, seconded by Traynor to:</i> DISMISS THE REQUEST FOR INVESTIGATION FOR LACK OF EVIDENCE TO SUBSTANTIATE A VIOLATION ACCORDING TO NDAC 54-02-07-04.</p> <p><i>Roll call vote:</i> Anderson, yes; Benson, yes; Case, yes; Christianson, yes; Frank, absent; Rustvang, yes; Sund, yes; Tello-Pool, no; Traynor, yes; 7 yes, 1 no, 1 absent. Motion carried.</p> <p>Discussion continued regarding how to review the issue with Kalanek as an employer/employee issue. Christianson requested some type of public notification that the issue is being addressed by the board. The board discussed how to notify the public and concerned parties how the issue is being addressed. The board discussed that as part of the discussions with Kalanek as an employer a mechanism for notifying others be discussed. The board requested feedback on what happened, how it happened, and how to prevent this from happening again.</p> <p><i>Motion Sund, seconded by Anderson:</i> DIRECT THE EXECUTIVE COMMITTEE TO FOLLOW UP WITH DR KALANEK TO WORK ON EMPLOYER/EMPLOYEE ISSUES RELATED TO THE ALLEGATIONS IN THE LETTER FROM THE ND LONG TERM CARE ASSOCIATION AND THE ND HEALTHCARE ASSOCIATION AND PRESENT RECOMMENDATIONS TO THE FULL BOARD AT THE SEPTEMBER MEETING.</p> <p><i>Roll call vote:</i> Anderson, yes; Benson, yes; Case, yes; Christianson, yes; Frank, absent; Rustvang, yes; Sund, yes; Tello-Pool, yes; Traynor, yes; 8 yes, 0 no, 1 absent. Motion carried.</p>
Adjournment	The meeting adjourned at 11.50 a.m.